Annex

Letter dated 14 June 2013 from the members of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory addressed to the Secretary-General

We have the honour to provide the progress report of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory for transmission to the General Assembly in accordance with paragraph 6 (h) of Assembly resolution ES-10/17 (see annex).

We request that the progress report be issued as a document of the General Assembly. Our 2009, 2010, 2011 and 2012 progress reports were issued as documents A/ES-10/455, A/ES-10/498, A/ES-10/522 and A/ES-10/598, respectively.

(*Signed*) Ronald **Bettauer**
Member of the Board

(*Signed*) Harumi **Hori**
Member of the Board

(*Signed*) Matti **Pellonpää**
Member of the Board

Enclosure

Progress report from the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory

1. The Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (the Register of Damage) provides this progress report, in accordance with paragraph 6 (h) of General Assembly resolution ES-10/17, covering the period from 9 June 2012 to 14 June 2013. Our 2009, 2010, 2011 and 2012 progress reports were contained in documents A/ES-10/455 (2009), A/ES-10/498 (2010), A/ES-10/522 (2011), and A/ES-10/598 (2012), respectively. Board progress reports, as well as other basic documents pertinent to the work of the Register of Damage, are posted on the Register's website, www.unrod.org.

2. During the reporting period, the Register of Damage continued to collect, process and consider claim forms for inclusion in the Register in accordance with its Rules and Regulations Governing Registration of Claims.

3. Since its launch in 2008, the community outreach campaign has covered 176 communities with a population of approximately 629,170 in the governorates of Jenin, Tubas, Tulkarem, Qalqiliya, Salfit, Ramallah and Hebron in the Occupied Palestinian Territory, as well as in some communities around East Jerusalem. Thousands of printed posters and leaflets were distributed to inform potential claimants of the requirements for completing a claim for registration of damage. In addition, over a hundred meetings were held during the reporting period by the Register of Damage claim intakers with governors, mayors, local councils and potential claimants in the areas covered by the outreach campaign.

4. By 14 June 2013, over 36,803 claim forms for registration of damage and over half a million of supporting documents had been collected and delivered to the Office of the Register of Damage in Vienna. Claim intake activities have been completed in five out of nine affected governorates — Tubas, Jenin, Tulkarem, Qalqiliya, Salfit — nearly completed in Ramallah and ongoing in Hebron.

5. As of 14 June 2013, the Board has decided to include most or all of the losses set out in 8,418 claim forms, and excluded 576 claim forms where none of the losses met the eligibility criteria, bringing the total number of decided claims to 8,994.

6. Despite the diligent and dedicated work of the secretariat, there is a considerable gap between the number of claim forms collected and processed by the Vienna Office of the Register of Damage. This gap is likely to grow, given the small size of the staff of the Vienna Office and the complexity of the Board's task of reviewing claims.

7. Since its previous report, the Board has held four meetings in Vienna to review claim forms that had been translated, processed and individually reviewed by the Office staff. The Board met from 10 to 14 September 2012, from 10 to 14 December 2012, from 18 to 22 March 2013 and from 10 to 14 June 2013. At the four meetings, respectively, the Board reviewed and decided to include in the Register most or all of the losses set out in 631 claim forms, 761 claim forms, 741 claim forms and 762 claim forms. At its September, December, March and June meetings,

respectively, the Board decided not to include in the Register 68 claim forms, 10 claim forms, 14 claim forms and 8 claim forms, since none of the losses in the forms met the eligibility criteria in the Register of Damage's Rules and Regulations. At its September, December, March and June meetings, respectively, the Board also decided to defer action on 9 claim forms, 8 claim forms, 4 claim forms, and 1 claim form pending further review.

8. The claim forms reviewed during the reporting period included 2,662 claims for category A (agriculture) losses, 258 claims for category B (commercial) losses, 14 claims for category C (residential) losses, and 141 claims for category E (access to services) losses.

9. The Board, in its review of claims, continued to apply the eligibility criteria in accordance with article 11 of the Rules and Regulations Governing Registration of Claims. In view of the limited time available and the large number of claims for losses included in claim forms submitted to the Board for review by the Office staff, the Board continued to employ sampling techniques, as provided for in article 12 (3) of the Rules and Regulations. For example, during its June 2013 meeting, Board members reviewed in detail approximately 8 per cent of representative claims for losses included on the claim forms submitted for its review. As indicated in the 2012 Board report, a statistician was consulted concerning the sampling methodology; he advised that this level of sampling is reliable. Claims that did not meet the eligibility criteria were either excluded from the Register or returned to the claimants in order for them to provide clarification.

10. The Board continued its exploration of difficult issues of local rules, practice and documentation relating to the ownership, inheritance of land in the Occupied Palestinian Territory, in order to determine whether the claimant had a prima facie legal interest in land and the claimant's share. Complex fractional calculations continued to be necessary in cases where there were multiple owners in order to record a claimant's specific share of the losses to be included in the Register. Difficulties caused by the use of different names (e.g., tribal name, family name, great-grandfather's name) for members of the same family and other such apparent inconsistencies often necessitate special vigilance in the verification of the legal interest.

11. Paragraph 12 of the Board's 2012 report identified some of the issues addressed and decisions reached during the previous reporting period. The following are among the issues and decisions reached by the Board during the present reporting period.

(a) Claims for damage resulting from fires: The Board decided to include in the Register claims for loss resulting from fires that broke out after the construction of the Wall between the Green Line and the Wall. In this regard, the Board decided to record the resulting losses of crops, produce and income, since it was a reasonably foreseeable consequence of construction of the Wall that farmers would no longer be able to access their land or tend to it as before, and a significant increase in the number of fires and the level of fire damage would occur (irrespective of the initiating cause of the fire). It was noted that there were three fires reported in Qaffin and Akkaba villages (the main areas from which these claims originate) between 1990 and 1992, none at all between 1993 and 2004, and then 26 between 2005 and 2012. Claimants stated that they were prevented by the Wall from tending their land, removing undergrowth that would spread fires, and

being present to protect against potential arsonists and other threats. In addition, they stated that because of the Wall, fire brigades could not reach and extinguish fires that started. The Board would stress that it has based the causal link between the Wall and fire-related losses, as required by article 11 (2) of the United Nations Register of Damage's Rules and Regulations, on the foreseeability test, not on the application of any benefit of the doubt or on a "significant factor" test.

(b) Land purchased or inherited after construction of the Wall: The Board decided not to register claims where the claimant had acquired the land in question in an apparently arms-length purchase after the construction of the Wall, thus not having a legal interest in the claim at the time the loss was incurred and not showing the construction of the Wall as the direct cause of loss. The Board also decided that where a claimant only inherited his rights with respect to the land after construction of the Wall, typically as an heir of one of his relatives, without further explanation, his legal interest only arises at the later time. However, the Board decided to register claims where the claimant acquired the land from a close family member through a sale, purchase, or transfer transaction since research indicated that families typically worked the land as a family group and sometimes such a transaction would be entered into to facilitate an application to the Israeli for a permit to cross the Wall to work on land on the Israeli side of the Wall.

(c) Changed route of the Wall: Where the route of the Wall was changed so that land previously inaccessible became accessible, the Board decided to record that access was restricted or lost only for the period in question and only registered losses attributable to that period. The Board decided to record losses after that period where there was continuing damage to the land after the re-routing of the Wall, such as a security road that had been constructed as part of the Wall complex.

(d) Claims based solely on increased or decreased prices: The Board decided that claims for income losses based solely on increased prices of certain goods or decreased prices of produce will not be included in the Register because causation is too speculative.

(e) Claims for loss of access to land involving proxies: The Board decided that, where a claimant previously accessed his land between the Green Line and the Wall through proxies and those proxies have completely lost access, loss of access will be included in the Register.

(f) Claims for cost of workers: The Board decided to register claims for the cost of workers where claimants, having lost access to their land between the Green Line and the Wall, employed workers to cultivate their land. In such cases, the Board decided to register loss of produce and income only where there was a credible explanation provided by the claimant that such losses were incurred despite having workers on the land, and where the losses were caused by the construction of the Wall.

(g) Sharecropping agreements: Some claimants had oral agreements with third parties to cultivate land owned by the third parties, which were formalized into written contracts sometime after the construction of the Wall. The Board decided to register claims for agricultural losses sustained by these claimants since it was understood that oral agreements were commonplace in the region and that some transactions were formalized after the construction of the Wall to facilitate the

application for permits to cross the Wall to work on land on the other side of the Wall.

(h) Claims related to interruptions in university studies: Some claimants who enrolled in universities after construction of the Wall claimed for losses relating to temporary interruption of their studies some time thereafter, stating that they could not continue because of the high cost of travel or the delays at Wall gates; some of these claimants resumed their studies and others did not. The Board decided to defer these claims pending further consideration.

(i) Legal interest based on contractual rights and commercial law: The Board decided that where a claimant's legal interest in a claim is based on a contract, the issue should be determined under contract law and not on the basis of a benefit of the doubt. The Board decided to explore the matter of applicable contract and commercial law further during the upcoming year.

12. As before, the Board would like to express its appreciation for the indispensable cooperation extended by the Palestinian Authority and the Palestinian National Committee for the Register of Damage, as well as for the support provided by local Governors, mayors and members of village councils on many practical aspects, without which outreach and claim-intake activities could not be undertaken successfully. As for the Government of Israel, it continues to consider that any claims in relation to damage caused by the construction of the Wall should be addressed through the existing Israeli mechanism. On the practical level, the Executive Director of the Register of Damage continues to maintain constructive contacts with relevant Israeli authorities and, during the reporting period, the Office of the Register of Damage did not experience any problem with access, freedom of movement, security, delivery of needed materials or issuance of required visas.

13. The Board of the Register of Damage notes with satisfaction the good cooperation with United Nations agencies and offices present on the ground in the Occupied Palestinian Territory, as called upon in paragraph 14 of General Assembly resolution ES-10/17. The Board particularly appreciates the efficient and tangible contribution provided by the United Nations Office for Project Services in the areas of logistic, procurement, human and financial resources, and management in support of the Register of Damage. During the reporting period, the Register of Damage also continued to benefit from cooperation with the United Nations Special Coordinator for the Middle East Peace Process and his Office.

14. The outreach and claim-intake activities in the Occupied Palestinian Territory, which are currently conducted by 12 Register of Damage claims intakers, have since their initiation been funded by voluntary contributions from the Governments of Austria, Azerbaijan, Belgium, Finland, France, Jordan, Kazakhstan, Malaysia, Morocco, the Netherlands, Norway, the Philippines, Qatar, Saudi Arabia, Switzerland, Turkey and the OPEC Fund for International Development (OFID). Note may be taken that several governments as well as OFID have provided donations twice.

15. The Board would like to express its appreciation to these donors for providing funding and political support enabling the implementation of the provisions of General Assembly resolution ES-10/17. Nevertheless, the resources that are currently available will be exhausted by the end of November 2013, thus putting

into question the continuation of the claim intake activity in the Occupied Palestinian Territory.

16. The Board commends the diligent and dedicated work of the secretariat.

17. The Board of the Register of Damage will continue to provide periodic reports.

Members of the Board of the Register of Damage

Vienna, 14 June 2013